

No. 1-12-2423

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PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 10 CR 21336
)	
DEANDRE MINOR,)	
)	Honorable Clayton J. Crane,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.

Presiding Justice Connors and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 **Held:** In this appeal of a sexual abuse conviction, we find that the trial court did not err in admitting other crimes testimony regarding defendant's attempted theft of a laptop computer in the victim's apartment.

¶ 2 Following a bench trial, defendant Deandre Minor was convicted of criminal sexual abuse and was sentenced to three years' imprisonment. Finding no error in the admission of the laptop computer evidence which is defendant's only assignment of error on appeal, we affirm.

¶ 3 BACKGROUND

¶ 4 We summarize the facts as established by the trial testimony, which is largely uncontested. On September 28, 2010, the complainant, T.G., was a freshman at Columbia College and living in a four-bedroom apartment-style dormitory in Chicago with three roommates, one of whom was

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Georgia Gove. The apartment was on the fourth floor. At around 1:00 a.m., T.G. began to do laundry in the laundry room located on the second floor of the building. While T.G. was doing her laundry and going back and forth between the laundry room and her apartment, she left the front door to her apartment propped open. T.G. returned to her room at around 1:30 a.m.

¶ 5 At about 2:30 a.m., T.G.'s roommate, Georgia Gove, was asleep in her bedroom when she was suddenly awoken by defendant standing near her bed, right beside her head, stating he was looking for somebody named Kristen. Although Gove could not see defendant's face clearly, she did notice that he was tall and African-American. Gove told defendant to leave her room, which he did, while still asking for Kristen. Gove then turned on the lights to see if anything was missing, and noticed her laptop computer was no longer where she had left it on the chair next to her bed. Gove went after the defendant and confronted him as he was standing by the front door of the apartment talking to her roommate, T.G. T.G. had noticed the defendant as he was leaving the apartment from Gove's room and had stopped him to ask who he was and what he was doing there. T.G. had never seen him before, but assumed that he had a reason to be in the apartment.

¶ 6 Gove then asked defendant if she could see his backpack since her computer was missing and she believed he may have taken it. Defendant let Gove look in his bag, but the laptop computer was not there. Defendant suggested to Gove that the laptop might be in the living room and when she checked, she found it in the living room open on one of the tables. Gove put her laptop back in her bedroom and called her friend, Alex, who came and brought her back to his apartment down the hall. When Gove left the apartment, she heard T.G.'s and defendant's voices coming from T.G.'s room and Gove recalled that the voices were in a conversational, rather than argumentative, tone.

¶ 7 T.G. testified that when Gove left in search of her laptop, she continued talking to defendant by the doorway. T.G. assumed that defendant was a fellow student in the dorm, because he had somehow cleared security to enter the building. Defendant explained to T.G. that he was looking for a girl named Kristen. Defendant also told T.G. that his phone needed to be charged and that he needed to contact his brothers, who were outside. T.G. noticed the make of defendant's phone and thought that her phone charger might work on defendant's phone, so she offered him the use of her charger which was located in her bedroom. The two then went into T.G.'s room where defendant plugged in his phone and took off his jacket. While the phone was charging, defendant and T.G. proceeded to have a 10-minute conversation during which defendant sat on a chair by the desk and T.G. sat on her bed. During this conversation, defendant admitted to T.G. that he was not a student there and showed her money and some marijuana.

¶ 8 T.G. testified that toward the end of the conversation, defendant leaned back in his chair and as a result his clothes came into contact with a piece of chewed gum which T.G. had left on the desk. T.G. helped defendant get the gum off of his back and as she was standing next to him, defendant lifted her and threw her on the bed. Defendant then proceeded to get on top of her, pinning her down on the bed so that she could not move. Although T.G. was saying "no" and struggling, defendant put his arms up her shirt and touched her breasts. T.G. recalled that defendant was strong and that she was too scared to call out to anyone while he was on top of her. Defendant also tried to pull T.G.'s leggings down, and touched her vaginal area. T.G. testified that at this time she saw that defendant's penis was out of his pants and erect.

¶ 9 T.G. further testified that she did not consent to any sexual act with defendant and when she

was finally able to get defendant off of her, she told him to leave her room and apartment, which he did. T.G. stated that she did not go immediately to security because she was in shock. T.G. also exited the apartment, and she noticed defendant behind her as she was heading toward the elevators. T.G. asked defendant if he was leaving the dorm floor and he told her that he was not ready to leave yet. T.G. entered the elevator by herself and went to the second-floor laundry room to retrieve her laundry. She next went back to her apartment, and told her roommates what happened. Subsequently, between 3:30 a.m. and 4:00 a.m., all three roommates accompanied T.G. to the security desk to report the laptop computer incident and sexual assault. Defendant was described as “a tall, African American male, about six, six one, 200 pounds,” wearing a brown beanie with white lettering, a black hoodie with a jacket over it, dark jeans, white “Jordans” and carrying a two-strap black backpack.

¶ 10 J. P. Dries, the director of security at the dormitory, was off-site when he received a call at around 5:00 a.m. He went to the dorm and reviewed security surveillance tapes for the person described as the offender. Dries noted a person matching the description, and he downloaded the images into video clips and still photos for the police. On October 5, 2010, T.G. identified the person in the still photo from the video surveillance tape as the individual who attacked her. The police issued a community alert based on this identification, and they received information identifying the person in the photo as the defendant a few days later.

¶ 11 On October 9, 2010, both T.G. and Gove were shown a photo array consisting of six photos, including one of defendant. T.G. identified defendant’s photo from the array as her assailant, but did not sign defendant’s photo because she was not 100% sure of her identification. Gove also

identified defendant's photo from the array as the "person who tried to steal [her] laptop and the person who attacked [her] roommate." Gove admitted that she also did not sign defendant's photo as she was not 100% sure that he was the offender but "had some idea" it was him. Based on these photo array identifications of defendant, a police investigative alert was issued.

¶ 12 On November 12, 2010, defendant was in custody because he had been arrested the day before on a separate incident. T.G. and Gove viewed a line-up, which included defendant. T.G. positively identified defendant from the line-up as the "man who tried to sexually assault [her]" and Gove positively identified defendant as the person who tried to steal her laptop.

¶ 13 At trial, the State and defense stipulated that a proper chain of custody was maintained at all times over T.G.'s gray sweatpants and black t-shirt, as well as the buccal swabs collected from T.G. and defendant. They further stipulated that DNA analysis was conducted on a portion of the sweatpants and that male and female DNA was identified and submitted to the DNA database. The "database identified a match between the male DNA and the defendant's DNA profile[,] " which forensic scientist Andrew Garinger confirmed by comparing defendant's DNA from the swab to the DNA from the sweatpants.

¶ 14 After the State rested in its case-in-chief, the court granted defendant's motion for directed verdict on count two, which alleged criminal sexual assault based on contact between defendant's mouth and T.G.'s breast, but denied the motion as to the remaining two counts.

¶ 15 Defendant presented no evidence and confirmed on the record that he did not want to exercise his right to testify. Based on the evidence presented, the court found him guilty of count three, criminal sexual abuse but not guilty of the remaining count. The court stated that "there was

no doubt in my mind that after she was thrown on the bed, the defendant's hands went underneath her shirt to her breasts" and that "beyond a reasonable doubt there was not consent." The court also stated that in finding T.G. credible it had taken into consideration the fact that she was only a freshman in college so "her action[s] may not be totally consistent with what a more mature person might have done."

¶ 16 After hearing arguments in mitigation and aggravation, the court sentenced defendant to three years' imprisonment. This appeal followed.

¶ 17 ANALYSIS

¶ 18 On appeal, defendant contends that the trial court erred in admitting impermissible other crimes evidence when Gove testified regarding defendant's attempted theft of her laptop computer. Defendant points out that, on four separate occasions, the trial court allowed Gove to explain that defendant had attempted to steal her laptop, despite the fact that there was absolutely no proof to support this claim. Defendant argues that by admitting this unsubstantiated character attack into the record, he was unnecessarily painted as a criminal and, as such, was unduly prejudiced. Furthermore, while defendant acknowledges that this error was not preserved in a post-trial motion, he argues that it should nonetheless be reviewed under the plain error doctrine and, as a result, we should reverse defendant's conviction and remand for a new trial.

¶ 19 Defendant concedes that he has forfeited the issue on appeal, but argues that we should consider it under the plain error doctrine. The plain error doctrine allows a reviewing court to "by-pass normal rules of forfeiture and consider '[p]lain errors or defects affecting substantial rights * * * although they were not brought to the attention of the trial court.'" *People v. Eppinger*, 2013

IL 114121, ¶ 18 (citing Ill. S.Ct. R. 615(a)). Plain error review is proper under either of two circumstances: “(1) when ‘a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error’; or (2) when ‘a clear or obvious error occurred and that error is so serious that it affected the fairness of defendant’s trial and challenged the integrity of the judicial process, regardless of the closeness of evidence.’” *Id.* (citing *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)). However, where there is no error, there can be no plain error. *People v. Johnson*, 218 Ill. 2d 125, 139 (2005).

¶ 20 “Evidence of other crimes is admissible if it is relevant for any purpose other than to show the defendant’s propensity to commit crime.” *People v. Pikes*, 2013 IL 115171, ¶ 11 (2013) (citing *People v. Wilson*, 214 Ill. 2d 127, 135 (2005)). Other-crimes evidence is admissible for the purpose of showing *modus operandi*, intent, motive, identity, or absence of mistake regarding the crime with which a defendant is charged. *Id.* (citing *People v. Robinson*, 167 Ill. 2d 53, 62-63 (1995)). However, even if the evidence is relevant, it “should not be admitted if its probative value is substantially outweighed by its prejudicial effect.” *Id.* (citing *People v. Moss*, 205 Ill. 2d 139, 156, (2001)). The admissibility of evidence rests within the sound discretion of the trial court and that decision will not be disturbed absent an abuse of discretion. *Id.*, ¶ 12 (citing *People v. Becker*, 239 Ill. 2d 215, 234 (2010)).

¶ 21 The Illinois Supreme Court has summarized the standards for admissibility of other-crimes evidence as follows:

Evidence of crimes for which a defendant is not on trial is inadmissible if relevant

merely to establish his propensity to commit crime. [Citations.] Such evidence overpersuades the jury, which might convict the defendant only because it feels he is a bad person deserving punishment. [Citations.] Evidence of the commission of other crimes is admissible, however, when such evidence is relevant to prove *modus operandi*, intent, identity, motive, or absence of mistake. [Citations.] In fact, this court has held that evidence of other crimes committed by the defendant may be admitted if relevant to establish any material question other than the propensity to commit a crime. [Citations.] When such evidence is offered, the trial judge must weigh the relevance of the evidence to establish the purpose for which it is offered against the prejudicial effect the introduction of such evidence may have upon the defendant.”

Pikes, 2013 IL 115171, ¶ 13 (citing *People v. Thingvold*, 145 Ill. 2d 441, 452 (1991)). Thus, when the State seeks admission of other-crimes evidence, it must first show that a crime took place and the defendant committed it or participated in its commission. *Id.*, ¶ 15 (citing *Thingvold*, 145 Ill.2d at 455)).

¶ 22 An exception to other-crimes evidence deals with the admissibility of “intrinsic” or evidence related to the charged offense. *People v. Hale*, 2012 IL App (1st) 103537, ¶ 15. Our supreme court has “recognized that evidence of other crimes may be admitted if it is part of the ‘continuing narrative’ of the charged crime.” *Pikes*, 2013 IL 115171, ¶ 20 (citing *People v. Adkins*, 239 Ill. 2d 1, 33 (2010)). More specifically, we have “recognized evidence of another crime is admissible if it is part of a continuing narrative of the event giving rise to the offense or, in other words,

intertwined with the offense charged.” *People v. Thompson*, 359 Ill. App. 3d 947, 951 (2005) (citing *People v. Harper*, 251 Ill. App.3d 801, 804 (1993)); see also *People v. Lewis*, 243 Ill. App. 3d 618, 625-26 (1993) (other-crimes evidence is admissible where it relates to the events that led to the charged offense). As we have explained, “[w]hen facts concerning uncharged criminal conduct are all part of a continuing narrative which concerns the circumstances attending the entire transaction, they do not concern separate, distinct, and unconnected crimes.” *Thompson*, 359 Ill. App. 3d at 951 (citing *People v. Collette*, 217 Ill. App. 3d 465, 472 (1991)). If the challenged evidence is intrinsic or related to the charged crime, it does not have the same character as traditional other crimes unrelated to the offense charged. *People v. Manuel*, 294 Ill. App. 3d 113, 123-24 (1997) (other crimes analysis is narrowly confined to that evidence that is “*extrinsic* to the matter being tried, not contained in it, not part of it”). Thus, when the other crime is intrinsic to the charged offense, admissibility should be analyzed under ordinary relevancy principles. *People v. Morales*, 2012 IL App (1st) 101911, ¶ 24 (“Different evidentiary rules apply regarding evidence of other crimes that are unrelated to the charged offenses and other crimes evidence that is ‘part and parcel’ of the charged offenses.”); *People v. Rutledge*, 409 Ill. App. 3d 22, 25 (2011) (“if the evidence of the other offenses and the evidence of the crime charged are inextricably intertwined, the rule relating to other crimes is not implicated and ordinary relevancy principles apply”).

¶ 23 Defendant argues that the trial court erroneously allowed improper evidence of other crimes to be admitted at trial, because there was no evidence that defendant committed the other crime and that evidence was irrelevant to the issue of motive pertaining to the alleged criminal sexual abuse. Defendant points out that the issue of whether or not he stole Gove’s laptop was irrelevant and had

no bearing on whether T.G. consented to a sexual interaction with him. We find defendant's contentions without merit.

¶ 24 Gove's testimony concerning defendant's actions prior to the sexual assault was admissible because it explained how defendant came to be in the victim's apartment that evening and how defendant and the victim came to be together prior to the assault. *Thompson*, 359 Ill. App. 3d at 951 ("evidence of another crime is admissible if it is part of a continuing narrative of the event giving rise to the offense or, in other words, intertwined with the offense charged"). Thus, Gove's testimony regarding her confrontation of defendant for being in her room and believing that he had taken her laptop computer was part and parcel of the proof of the charged sexual assault on T.G.

¶ 25 The incidents involving defendant and the two roommates were close in time and occurred in the very same apartment. Gove's testimony showed how and why T.G. and defendant came into contact with each other at the front door to the apartment and what led to defendant going into T.G.'s room and sexually assaulting her. Furthermore, its relevance did not stem from defendant's commission of a theft, but rather from its connection to the charged assault and defendant's presence in T.G.'s apartment that night.

¶ 26 Alternatively, Gove's testimony was also admissible to establish identity and lack of an innocent state of mind or intent. As discussed, under the other crimes doctrine, not all evidence of a defendant's prior crime is barred—only that which the State would use to suggest the defendant's propensity to commit crimes. See Ill. R. Evid. 404(b) ("Such evidence may also be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."). However, before evidence of other crimes can be admitted,

there must be a showing that a crime took place and the defendant either committed it or participated in its commission. *Thingvold*, 145 Ill. 2d at 455-56. Proof of defendant's connection to the other crime does not need to go beyond a reasonable doubt but has to be more than mere suspicion. *Id.* at 456. Here, the evidence established defendant's identity because Gove's testimony strengthened the identification of defendant as T.G.'s offender and bore directly on the relationship between the parties and how defendant came to be in the apartment. Furthermore, the evidence was indicative of defendant's intent and absence of an innocent state of mind because evidence of his entering Gove's room without permission and then stealing her laptop computer bears directly on his defense of consent and claim that he lacked criminal intent while in T.G.'s bedroom. Accordingly, we find that the trial court's consideration of Gove's testimony was not clearly erroneous.

¶ 27 Because we find the laptop evidence was admissible because it was part of the narrative of what occurred, we need not consider the State's other contention that the evidence was admissible under the invited error doctrine.

¶ 28 Finally, we find that the evidence in this case was not closely balanced. The evidence established that defendant was not a student authorized to enter the building, but instead snuck past security and was walking in the halls in the early morning hours. He was shown on the building video surveillance tape trespassing into the property. Defendant entered T.G.'s apartment without permission. T.G. later identified defendant as the person she saw inside her apartment and who sexually attacked her from a photo array, a lineup, and in court. Additionally, T.G. testified that defendant forced himself on her and sexually assaulted her. T.G. testified that she did not consent to defendant touching her and was telling him to stop. Defendant's buccal DNA was also found on

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the crotch area of T.G.'s leggings, which not only corroborated but was consistent with her testimony of the assault.

¶ 29 Therefore, contrary to defendant's assertion, the complained-of evidence was not so closely balanced that it would have resulted in a different verdict for defendant. The trial court was in the unique position of being able to view T.G. as she testified and determine if she was credible. Furthermore, the trial court never referenced the laptop evidence in its oral findings.

¶ 30 CONCLUSION

¶ 31 For these reasons, we affirm the conviction of the defendant.

¶ 32 Affirmed.